IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 326 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGUBHAI SHAMAJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 326 of 1991

MR DD VYAS for Petitioner No. 1-4

MR AY KOGJE APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 30/01/2003

ORAL JUDGEMENT

#. Appellants-accused have challenged in this appeal the

impugned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Surat dated 4.5.1991 in Sessions Case No.12/90 whereby the learned Judge found all the appellants-accused guilty for the offences under Sections 436, 427 read with section 114 IPC and sentenced them to suffer 3 years RI and to pay fine of Rs.2,000/= in default to undergo SI for 15 days for the offence under Section 436 IPC and to suffer 2 years RI and to pay fine of Rs.100/= in default to further undergo SI for 15 days for the offences under Section 427 read with Section 114 of IPC. Both the sentences were ordered to run concurrently.

#. It is the prosecution case that on 19.12.1989 at about 10.00 am all the appellants-accused armed with weapons like dharia, sticks came to the place of incident and damaged the huts of the hutment dwellers and set fire on one of the huts and also threatened the hutment dwellers by giving filthy abuses. First, all of them committed offence punishable under Section 436, 427, 504, 506(2) read with section 114 of IPC and also offence of wrongful restrain under Section 341 IPC. Complaint was lodged by 2.00 p.m. i.e. within four hours of the incident at Varacha Police Station by the complainants.

#. After registering the FIR, the police made the investigation in the case and filed charge sheet against all the appellants-accused for the offences under Section Section 436, 427, 504, 506(2) read with section 114 of IPC. However, the learned Judge found that the prosecution has failed to prove its case against the accused for the offence under Section 341 IPC as well as offences punishable under Sections, 504, 506(2) IPC because no witness deposed before the court that they were wrongfully restrained or they were threatened with the life or gave filthy abuses. However, the learned judge found that the prosecution has proved its case against the accused for the offence under Section 427 and 437 IPC and accordingly, the learned Judge convicted and sentenced all the accused for these offences.

#. At the outset, I may state that the learned counsel Shri Vyas for the appellants-accused straightaway conceded the order of conviction recorded by the learned Judge convicting the appellants-accused under Section 427 and 436 IPC read with Section 114 IPC. He only urged that the substantive sentence of 3 years and 2 years respectively imposed by the learned Judge for the offence under Section 436 and 427 is too harsh and considering the peculiar facts and circumstances of the case, the interest of justice would be served by enhancing fine

imposed by the learned Judge and setting aside substantive sentence imposed by the learned Trial Judge.

#. In support of aforesaid submission, Mr.Vyas submitted that all the appellants-accused are not harden criminals. They are lawful owners of the land adjacent to the huts of the complainant and others. The hutments have illegally encroached upon the Corporation land. Tar road was to be prepared, but they were not removing their hutments from that place and because of that the construction of Tar road could not be completed as a result of which the accused, who were residing in the society were suffering and at the heat of patience the incident in question took place. He submitted that if their huts were not destroyed by them, then they would have been removed by the Corporation authorities sooner or later and they would not have got any compensation. He submitted that if the fine is suitably enhanced, then they (victims) may be paid that amount by way of compensation because no useful purpose would be served by sending the appellants-accused to jail after a period of more than 13 years of commission of offence.

#. Considering the facts and circumstances of the case, learned APP, Shri Kogje appearing for the respondent-State submitted that by reducing the substantive sentence fine be suitably enhanced and each of the accused be ordered to pay Rs.10,000/=, which would come to Rs.40,000/= and out of the said amount deposited by the accused, the victims be paid that amount by way of compensation. However, Mr.Vyas submitted that fine of Rs.10,000/= to each of the accused would be too harsh. He submitted that appellant-accused No.1, Bhagubhai Shamajibhai, who stated to have played major role may be fined with Rs.10,000/= and remaining accused be ordered to be paid fine of Rs.5,000/= each.

#. Considering peculiar facts and circumstances of the case narrated hereinabove, I am of the considered opinion that no useful purpose would be served by sending the appellants-accused in jail after a period of more than 13 years of the commission of the offence. The appellants-accused stated to have remained in jail for a couple of days as undertrial prisoners, therefore, substantive sentence is reduced as sentence already undergone by enhancing fine of Rs.1,000/= imposed by the learned Judge. The appellant-accused No.1, Bhagubhai Shamajibhai is ordered to pay fine of Rs.10,000/= and remaining appellants-accused are ordered to pay Rs.5,000/= each (in all Rs.15,000/=), total amount of Rs.25,000/=. Out of the total amount of Rs.25,000/=

deposited by the appellants-accused, learned Trial Judge may disburse the said amount to the victims in equal proportion after issuing necessary notice to them.

#. This appeal is partly allowed to the aforesaid extent only on the point of sentence while maintaining the order of conviction recorded by the learned Judge. The appellants-accused are given two months time to pay up the fine, failing which all of them will have to undergo R.I. of six months. The bail bonds of the appellants-accused stand cancelled.

(B.J.Shethna, J.)
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